

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MIGUEL SHERWOOD,

Plaintiff,

V.

JELD-WEN, INC., a Washington Corporation, and David Balles,

Defendant(s).

NO. CV-04-3020-LRS

ORDER DENYING DEFENDANT'S
PARTIAL SUMMARY JUDGMENT

Before the Court is Defendant Jeld-Wen Inc.'s Expedited Motion for Extension of Dispositive Motion Deadline and Partial Summary Judgment on Affirmative Defense of Workers Compensation Preemption (Ct. Rec. 52), filed on April 1, 2005.

DISCUSSION

Defendant asserts plaintiff previously represented that he was not a Jeld-Wen Employee, which caused defendant to withdraw its affirmative defense that Mr. Sherwood's claim is preempted by the workers compensation statute. Defendant states that for the first time, in his trial brief, plaintiff has admitted that he and Jeld-Wen had an employee-employer relationship at the time of the accident. Defendant argues that plaintiff's exclusive remedy is in workers compensation and his claims against defendant should be dismissed. In

1 the alternative, defendant states that it should be able to amend its
2 proposed findings of facts and conclusions of law. In particular,
3 defendant argues it should be permitted to add the pre-emption
4 defense, which it earlier withdrew based on plaintiff's
5 representations that Mr. Sherwood was not an employee, to the issues
6 of law contained in its trial brief.

7 Plaintiff argues that the evidence indicates that plaintiff did
8 not "consent" to an employment relationship with Jeld-Wen. Further,
9 plaintiff responds that the cases cited in his trial brief do not
10 amount to an admission that plaintiff was an "employee" for purposes
11 of Industrial Insurance Act immunity.

12 Consent, both defendant and plaintiff acknowledge, is one of the
13 two factors required for a finding that an employment relationship
14 exists for purposes of workers compensation under Washington law.
15 Plaintiff states, in any event, issues of material fact exist with
16 respect to consent and the employment status issue that make summary
17 judgment inappropriate here.

18 The court has reviewed the file, the pending motion and briefing
19 thereon, and is fully informed. The court finds that genuine issues
20 of material fact exist as to the employment status of plaintiff,
21 thereby precluding partial summary judgment. Accordingly,

22 **IT IS ORDERED** that:

23 1. Defendant's Motion for Summary Judgment, Ct. Rec. 52, filed
24 on April 1, 2005, is **DENIED**.

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2. Defendant is, however, permitted to amend its proposed findings of facts and conclusions of law to include the affirmative defense of immunity under the Industrial Insurance Act.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide copies to counsel.

DATED this 15th day of April, 2005.

s/Lonny R. Suko

LONNY R. SUKO
United States District Judge